

## Order of the State Intellectual Property Office

( No. 71 )

The *Decision of the SIPO on Amending the “Measures on Patent Administrative Enforcement”*, as deliberated and adopted at the executive meeting of the State Intellectual Property Office, is hereby issued and shall come into force on July 1, 2015.

Appendix: the full text of the revised *Measures on Patent Administrative Enforcement*

Shen Changyu, the Commissioner

May 29, 2015

### Decision of the State Intellectual Property Office on Amending the *Measures on Patent Administrative Enforcement*

It is hereby decided by the SIPO to amend the *Measures on Patent Administrative Enforcement* (issued by Order No. 60 of the SIPO on December 29, 2010) as follows:

I. Article 1 is revised to read: “It is hereby to formulate the measures in accordance with the *Patent Law of the People’s Republic of China* and the *Implementing Regulations of the Patent Law of the People’s Republic of China* and other relevant laws and regulations in order to advance law-based government administration, regulate the patent administrative enforcement, safeguard the legitimate rights and interests of patent holders and social public, and maintain

the order of socialist market economy.”

II. Article 4 is revised to read: “The departments in charge of patent affairs shall strengthen the building of patent administrative enforcement forces, exercise strict management on the qualifications of administrative enforcement personnel, implement the responsibility system of administrative enforcement and regulate patent administrative enforcement.”

Patent administrative enforcement personnel (hereinafter referred to as “enforcement personnel”) shall hold administrative enforcement certificates issued by the SIPO and the people’s governments of provinces, autonomous regions and municipalities di-



rectly under the Central Government. The enforcement personnel shall dress formally when performing official duties.

III. A new article is added as Article 8, which reads: “The departments in charge of patent-related work shall intensify the administrative enforcement in the fields of exhibition and e-commerce, rapidly mediate and handle the patent infringement disputes that occurred during the exhibition and on the e-commerce platform, investigate and deal with patent pass-off in a timely manner.”

IV. A new article is added as Article 9, which reads: “The departments in charge of patent affairs shall strengthen the information construction of administrative enforcement and information sharing.”

V. Article 19 is revised as Article 21, and the first paragraph is revised to read: “when the department in charge of patent affairs deals with a patent infringement case, it shall conclude the case within three months from the date of putting the cases on record. Where the case is so complicated that the time to handle them needs to be extended, it shall be approved by the principal of the department in charge of patent affairs. The approved extended time limit shall not at most exceed one month.”

VI. Article 22 is revised as Article 24, and the first paragraph is revised to read: “where a respondent submits written statements and agrees on the mediation, the department in charge of patent affairs shall put the case on file within five days upon the receipt of the written statements, and notify the applicant and the respondent of the time and place of mediation.”

VII. Article 26 is revised as Article 28 which is revised to read: “where the department in charge of

patent affairs finds suspected patent pass-off or accepts relevant reports and complaints, it shall put the case on file within five days from the date when the behavior is found or within ten days upon the receipt of reports or complaints, and appoint two or over two enforcement personnel to investigate.”

VIII. Article 41 is revised as Article 43, and one subparagraph is added as Section VI, which reads:

“(VI) Order the infringing exhibition participants to adopt measures such as withdrawing the infringing exhibits, destroying or sealing up corresponding publicity materials, changing or covering the display boards.”

One paragraph is added as Paragraph 2, which reads: “Where the department in charge of patent affairs believes the infringement is established and makes a decision concerning the handling of the dispute, it shall notify e-commerce platform providers to timely delete, shield and disconnect the relevant links to web pages containing products infringing another party's patents or obtained by using patented methods.”

IX. Article 43 is revised as Article 45, one subparagraph is added as Section V, which reads: “Order the exhibition participants that counterfeit another party's patents to timely adopt measures such as withdrawing the patent passing-off exhibits, destroying or sealing up corresponding publicity materials and changing or covering the display boards.”

One paragraph is added as Paragraph 2, which reads: “Where the department in charge of patent affairs believes patent pass-off on the e-commerce platform is established, it shall notify the providers of e-commerce platforms to timely delete, shield and

disconnect relevant links to web pages containing patent pass-off products.”

X. Article 44 is revised as Article 46 and is revised as: “Where the department in charge of patent affairs believes the behavior of patent pass-off is established and orders the infringers to cease the infringement or makes a decision concerning the handling the disputes, it shall publicize the decision within 20 days from the date of making the decision

and timely publish the enforcement information via the government website.”

XI. The sequences of other paragraphs and sections are adjusted accordingly. “The personnel handling the case” in the revised Article 7, Article 17, Article 30, Article 38, Article 39 and Article 40 is revised as “enforcement personnel”.

The decision shall come into force on July 1, 2015.

## APPENDIX

### Measures on Patent Administrative Enforcement

( Issued by Order No. 60 of the State Intellectual

Property Office on December 29, 2010

Revised in accordance with the *Decision of the State Intellectual*

*Property Office on Amending the “Measures on Patent*

*Administrative Enforcement”*, Order No. 71 of the

State Intellectual Property Office on May 29, 2015)

#### Chapter 1 General Provisions

**Article 1** It is hereby to formulate the measures in accordance with the *Patent Law of the People’s Republic of China* and the *Implementing Regulations of the Patent Law of the People’s Republic of China* and other relevant laws and regulations in order to advance law-based government administration, regulate the patent administrative enforcement, safeguard the legitimate rights and interests of patent holders and social public, and maintain the order of socialist market economy.

**Article 2** These measures apply to patent ad-

ministrative enforcement carried out by the departments in charge of patent affairs, namely handling patent infringement disputes, mediating patent disputes and investigating and dealing with patent pass-offs.

**Article 3** When dealing with patent infringement disputes, the departments in charge of patent affairs shall be based on facts, take the law as the criterion and follow the principle of fairness and timeliness.

When dealing with patent infringement disputes, the department in charge of patent-related work shall



follow the principle of free will and legality and promote mutual understanding of the parties involved and reach a mediation agreement.

When investigating and handling patent pass-off cases, the department in charge of patent affairs shall be based on facts, take the law as the criterion and follow the principle of fairness and openness, the imposition of administrative penalty shall correspond with the facts, nature, circumstances and harm to the society of illegal acts.

**Article 4** The department in charge of patent affairs shall strengthen the building of patent administrative enforcement forces, exercise strict management of the qualifications of administrative enforcement personnel, implement the responsibility system of administrative enforcement and regulate the patent administrative enforcement.

Patent administrative enforcement personnel (hereinafter referred to as "enforcement personnel") shall hold administrative enforcement certificates issued by the SIPO and the people's governments of provinces, autonomous regions and municipalities directly under the Central Government. The enforcement personnel shall dress formally when performing official duties.

**Article 5** Concerning patent infringement disputes and patent pass-off cases which have major impact, the SIPO shall organize related departments in charge of patent affairs to handle and investigate when necessary.

With regard to major cases in which illegal acts occurred in more than two provinces, autonomous regions and municipalities directly under the Central Government, the department in charge of patent af-

fairs of provinces, autonomous regions and municipalities concerned shall report to and request the SIPO to coordinate and handle them.

The SIPO shall provide necessary guidance and support to the department in charge of patent affairs which encounter difficulties in the process of patent administrative enforcement.

**Article 6** The department in charge of patent affairs shall entrust competent patent administrative departments established by the municipal and county-level people's governments to investigate and deal with the patent pass-offs and to mediate patent disputes according to local actual conditions.

The commissioning party shall carry out supervision and guidance on the commissioned party concerning the handling of patent pass-offs and the mediation of patent disputes and bear legal responsibility.

**Article 7** Where the enforcement personnel appointed by the departments in charge of patent affairs have a stake in the party concerned, they shall withdraw and the party concerned shall have the right to apply for the withdrawal of them. The party who applies for a withdrawal of the enforcement personnel shall give reasons.

The withdrawal of the enforcement personnel shall be decided by the principal of the department in charge of patent affairs. Before the decision of withdrawal is made, the person who is required to withdraw shall suspend his/her work in the case concerned.

**Article 8** The department in charge of patent affairs shall intensify administrative enforcement in the field of exhibitions and e-commerce, mediate and handle the patent infringement disputes occurred dur-

ing the exhibition and on the e-commerce platform in timely manner to investigate and deal with patent counterfeits.

**Article 9** The department in charge of patent affairs shall enhance the information construction of administrative enforcement and information sharing.

## Chapter 2 Handling of Patent

### Infringement Disputes

**Article 10** Those who apply to the department in charge of patent affairs for the handling of patent infringement disputes shall meet the following conditions;

(I) the applicant is the patent holder or interested person;

(II) there is a specific respondent;

(III) there are specific items for the request and concrete facts and reasons;

(IV) the case is under the scope of accepting cases and jurisdiction of the department in charge of patent affairs;

(V) the party concerned files no lawsuit to the people's court relating to the patent infringement dispute.

The so-called "the interested person" in Section I includes the rightful successors of licensees and patent holders under patent licensing contracts. Among the licensees under the patent licensing contracts, those under exclusive licensing contracts may file a request independently whereas those under sole licensing contracts may file a request independently if the patentee does not apply. Except as stipulated in the contract, the licensee under the general patent licensing contracts shall not file a request independently.

**Article 11** Any person or unit who applies for

the handling of patent infringement disputes by the department in charge of patent affairs, he/she or it shall submit a written request and the following evidentiary materials;

(I) subject qualifications which means the individual shall submit the ID card or other valid certificates and the unit shall submit the valid business license or the copy of evidentiary document of subject qualifications and identifications of legal representatives or the principals;

(II) the certification of the validity of patent rights which means the copy of patent rolls or certificate of patent, and the receipt of patent annual fees of the year;

(III) where a patent infringement dispute involves patents for utility model or industrial design, the department in charge of patent affairs shall request the applicant to provide the patent evaluation report (search report of patents for utility model) published by the SIPO.

The applicant shall provide the copy of the request and relevant evidences.

**Article 12** The request shall specify the following:

(I) name or title, address of the applicant, name and title of the legal representative or the principal, name of the authorized agent and the agent, title and address of the patent agency;

(II) name or title and address of the respondent;

(III) the requested items that need to handle and facts and reasons.

Relevant evidences and evidentiary materials may be submitted as attachment of the request.

The request shall be signed or stamped by the



applicant.

**Article 13** Where the request is in compliance with the conditions stipulated in Article 10, the department in charge of patent affairs, shall put the request on record and notify the applicant within five working days upon the receipt of the request, and at the same time appoint three enforcement personnel or more to handle the dispute. Otherwise, the department in charge of patent affairs shall notify the applicant of rejection of the dispute and give reasons within the said time limit.

**Article 14** The department in charge of patent affairs shall send the written request and the copy of appendix to the respondent within five working days from the date of putting the request on record, and require him/her to submit a defense and its copy based on the number of respondents within 15 days upon the receipt of the request. Where the respondents give no defense exceeding the said time limit, it shall not affect the handling of the department concerned.

Where the respondent submits a defense, the department in charge of patent affairs shall send the copy of the defense to the applicant within five working days upon the receipt of the defense.

**Article 15** The department in charge of patent affairs may make mediation according to the will of the party concerned when handing the patent infringement disputes. Where an agreement is reached between two parties, a mediation agreement document shall be signed or sealed by the two parties concerned which is made and sealed by the relevant department. Where the relevant department fails to make mediation, it shall timely handle the dispute.

**Article 16** The department in charge of patent affairs may decide whether to conduct an oral hearing according to the situation of the case. Where the department decides to conduct an oral hearing, it shall notify the party concerned of the time and place of oral hearing before at least three working days of the oral hearing. Where the party concerned refuses to participate in the hearing without any justified reason, or exits during the hearing without permission, he shall be deemed to be absent in the hearing and withdraw the request.

**Article 17** Where the department in charge of patent affairs conducts oral hearing, it shall keep a written record of the participants and issues of the case which is signed and sealed by the enforcement personnel and the participants after verification.

**Article 18** “For the patent right of an invention or a utility model, the scope of protection shall be confined to what is claimed” referred to in Paragraph 1 of Article 59 of the *Patent Law*, means that the scope of protection for the patent right shall be confined to the scope identified by technical features described in the claims and also include the scope identified by the features the same as those in the claims. Equivalent features refer to the features that have the same means, functions and effects with the technical features described in the claims and the general technicians can associate without creative work.

**Article 19** Besides reaching a mediation agreement or withdrawing the request, the department in charge of patent affairs shall make a written decision and specify the following contents:

(I) name or title and address of the party concerned;

(II) facts and reasons stated by the party concerned;

(III) the reasons and basis for the establishment of the infringement;

(IV) where the decision confirms the establishment of the infringement and requests the infringer to immediately cease the infringement, it shall specify the type, object and scope of the infringement act that the respondent is ordered to cease; otherwise, the request of the applicant shall be rejected;

(V) the approach and time limit of filing administrative proceedings due to dissatisfaction with the decision.

The written decision shall be sealed by the department in charge of patent affairs.

**Article 20** After the department in charge of patent affairs or the people's court makes a decision or judgment that the infringement is established and order the infringer to immediately stop the infringement, where the patentee or the interested party requests for the handling on the infringement of the same type relating to the same patent right, the department in charge of patent affairs may make a direct decision ordering the infringer to immediately cease the infringement.

**Article 21** The department in charge of patent affairs shall conclude the disputes within three months from the date of putting the disputes on record when handling the patent infringement disputes. Where the cases are so complicated that the time to handle them needs to be extended, they shall be approved by the principal of the department in charge of patent affairs. The approved extended time limit shall not at most exceed one month.

The time for announcement, identification and suspension during the case shall not be included in the time limit for handling the cases described in the preceding paragraph.

### **Chapter 3 Mediation of Patent Disputes**

**Article 22** Where any party requests for the department in charge of patent affairs to mediate patent disputes, he/she or it shall submit the request.

The written request shall specify the following contents:

(I) name or title, address of the applicant, name and title of the legal representative or principal, name of the authorized agent and the agent, title and address of the patent agency;

(II) name or title and address of the respondent;

(III) the requested items that need to handle and reasons.

Where any party requests independently for mediating the amount of compensation relating to patent infringement, he/she or it shall submit the copy of the decision that confirms the establishment of infringement by the department in charge of patent affairs.

**Article 23** After the department in charge of patent affairs receives the request for mediation, it shall mail or send directly the copy of the request to the respondent or by other means and request the respondent to submit the statement of opinions within 15 days upon the receipt of the copy of request.

**Article 24** Where the respondent submits the statement of opinions and agrees on the mediation, the department in charge of patent affairs shall put the case on record within five working days upon the receipt of the statement of opinions, and notify the appli-



cant and respondent of the place and time of mediation.

If the respondent fails to submit the Statement of Opinion or rejects mediation as expressed in the Statement of Opinion, the patent administrative authorities shall not accept the case and shall inform the applicant.

**Article 25** The patent administrative authorities may invite relevant units or individuals to assist the mediation of the patent dispute, and the invited units or individuals shall assist the mediation accordingly.

**Article 26** If an agreement is made between both parties through mediation, the patent administrative authorities shall prepare a Mediation Agreement duly stamped with their official seal, which shall also be signed or stamped by both parties. If it fails to arrive at an agreement, the patent administrative authorities shall close the case in the form of revocation, which shall be informed to both parties.

**Article 27** If mediation is applied for due to any patent application right dispute or patent ownership dispute, the party may request the SIPO to suspend the patent application or relevant procedures of the patent right with the Notice of Acceptance issued by the patent administrative authorities.

If an agreement is made through mediation, the parties shall handle recovery formalities at the SIPO with the Mediation Agreement. If it fails to arrive at an agreement, the parties shall handle recovery formalities at the SIPO with the Notice of Case Revocation issued by the patent administrative authorities. If within one year as from the suspension application date the suspension is not applied for extension, the SIPO shall recover relevant procedures voluntarily.

#### **Chapter 4 Investigation and Treatment of Patent Counterfeiting Act**

**Article 28** If the patent administrative authorities detect any patent counterfeiting act or confirms the same as disclosed by whistle-blowing or complaints, they shall file the case within five working days from the detection or within ten working days from the receipt of the whistle-blowing or complaint, and designate two or more law enforcement personnel for investigation.

**Article 29** The investigation and treatment of patent counterfeiting act is governed by the patent administrative authorities in the place where such counterfeit patent occurs.

If any dispute arises out of the jurisdiction of patent administrative authorities, their mutual superior patent administrative authority of the people's government shall assign the jurisdiction. If there is no such mutual superior patent administrative authority of the people's government, the SIPO shall assign the jurisdiction.

**Article 30** In the event that the patent administrative authorities seal up and detain products involved in counterfeit patents, it shall be approved by their directors. Upon sealing up and detainment, relevant notices shall be issued to the party involved.

For sealing up and detainment of the products involved in counterfeit patents by patent administrative authorities, the products shall be checked in the field and prepared with records and checklists which shall be signed or stamped by the party or the law enforcement personnel. If the party rejects to sign or stamp, the law enforcement personnel shall indicate the rejection on the record. One set of checklist copy shall be



handed over to the party.

**Article 31** Upon closure on the case investigation, as approved by the principal of the patent administrative authorities, the following treatment shall be made according to the case situation:

(I) administrative punishment shall be imposed according to law if the patent counterfeiting act is established and punishable;

(II) punishments shall be exempt if the patent counterfeiting act is minor and has been corrected;

(III) the case shall be revoked if the patent counterfeiting act is not established;

(IV) if it's involved in criminal acts, it shall be handed over to the public security organ.

**Article 32** Before the patent administrative authorities make any administrative penalty decision, they shall inform the party of the facts, reasons and bases of determining such penalty, and shall brief the party about the rights it is entitled with.

Before the patent administrative authorities determine a penalty of a considerable amount, they shall inform the party of the rights it is entitled to request to hold the hearing of witness. If the party proposes the hearing of witness, it shall be organized according to law.

**Article 33** The party is entitled to state and defend itself, and the patent administrative authorities shall not aggravate the administrative punishment for the party's justification.

The patent administrative authorities shall verify the facts, reasons and evidences proposed by the party. If the facts proposed by the party are true and reasonable, the patent administrative authorities take the facts into account.

**Article 34** For major administrative punishment

imposed on complicated or severely unlawful acts, the punishment shall be determined through collective discussion of the directors of the patent administrative authorities.

**Article 35** Through investigation, for established and punishable patent counterfeiting act, the patent administrative authorities shall prepare the Notice of a Penalty Decision, indicating the following:

(I) name or designation, and address of the party;

(II) evidences, reasons and bases of identifying the establishment of the patent counterfeiting act;

(III) content of punishment and method of performance;

(IV) approach and term of the administrative reconsideration application and the administrative litigation proposal for objection to the penalty decision.

The Notice of a Penalty Decision shall be stamped with the official seals of the patent administrative authorities.

**Article 36** The patent administrative authorities' investigation and treatment of a patent counterfeiting case shall be closed within one month as from the case establishment. If the case is required of extension because of extraordinary complexity, the extension shall be approved by the directors of the patent administrative authorities. The approved extension shall not be more than 15 days.

The time required by hearing of witness and announcement during the case shall not be taken into account of the case handling term mentioned above.

## **Chapter 5 Investigation and Gathering for Evidence**

**Article 37** During handling a patent infringe-



ment dispute, if the party can't independently acquire part of evidences due to objective reasons, it may request the patent administrative authorities to investigate and gather evidence in writing. The patent administrative authorities determine whether or not to investigate and acquire relevant evidences based on circumstances.

During handling a patent infringement dispute or investigation and treatment of a patent counterfeiting act, the patent administrative authorities may investigate and acquire relevant evidences based on demand and according to their functions and powers.

When the law enforcement officers acquire relevant evidences, they shall produce their executive law enforcement certificates to the party or relevant personnel. The party and relevant personnel shall assist and cooperate with the officers and respond truthfully, and shall not reject and obstruct.

**Article 38** For investigation and evidence acquisition, the patent administrative authorities may look up and reproduce contracts and account books and other documents related to the case; inquire the party and the witnesses; conduct site inquisition through measurement, photographing and filming, etc. If it is involved with infringement to a patent of manufacturing method, the patent administrative authorities may require the party being investigated to demonstrate on the site.

The patent administrative authorities shall make written records upon investigation and evidence acquisition. The written records shall be signed or stamped by the law enforcement personnel and the unit or individual being investigated. If the unit or individual being investigated rejects to sign or stamp, the law en-

forcement personnel shall indicate the rejection on the record.

**Article 39** The investigation and evidence acquisition of the patent administrative authorities may use the method of sampling evidence.

If involved with product patents, samples could be withdrawn from the products being suspected of infringement to the right. In involved with method patents, samples could be withdrawn from the products suspected of being directly made from such method. The quantity of samples withdrawn shall be to the extent of adequately certifying the facts only.

The sampling evidence made by the patent administrative authorities shall be accompanied by written records and a checklist indicating the names, characteristics, quantities and preservation locations of the samples, which shall be signed or stamped by the law enforcement personnel and the units or individuals being investigated. If the units or individuals being investigated reject to sign or stamp, the law enforcement personnel shall indicate the rejection on the record. One set of the checklist copy shall be handed over to the units or individuals being investigated.

**Article 40** If the evidence could be extinguished or can hardly be retained in later stages, nor can it be evidenced through sampling, the patent administrative authorities may register and preserve the evidence and make decisions within seven days.

The units or individuals shall not destroy or transfer the evidence that is registered and preserved.

The registration preservation made by the patent administrative authorities shall be accompanied by written records and a checklist indicating the names, characteristics, quantities and preservation locations

of the evidences for registration, which shall be signed or stamped by the law enforcement personnel and the units or individuals being investigated. If the units or individuals being investigated reject to sign or stamp, the law enforcement personnel shall indicate the rejection on the record. One set of the checklist copy shall be handed over to the units or individuals being investigated.

**Article 41** If the patent administrative authorities require entrusting other patent administrative departments to assist to investigate and acquire evidences, they shall propose the requirement explicitly. The entrusted departments shall assist to investigate and acquire evidences timely and carefully, and shall respond as soon as possible.

**Article 42** If the customs carries out investigation on goods detained and suspected of infringement to the right, and requests assistance from the patent administrative authorities, the patent administrative authorities shall render assistance.

The patent administrative authorities may request assistance from the customs if they are handling a patent case involved with import and export goods.

## Chapter 6 Legal Responsibility

**Article 43** If the patent administrative authorities identify the establishment of a patent infringement act and make a handling decision to mandate the infringer to immediately cease the act of infringement, they shall take the following measures to stop the act of infringement:

(I) If the infringer manufactures patent-infringing products, the infringer shall be ordered to immediately cease the manufacturing and destroy the dedicated equipment and molds used to manufacture the

infringing products, and shall not sell or use the infringing products not yet sold or launch the same in the market in any other forms; if the infringing products are difficult to preserve, the infringer shall be ordered to destroy such products;

(II) If the infringer uses a patented method without being licensed by the patentee, the infringer shall be ordered to immediately cease the act of use and destroy the dedicated equipment and molds used to apply the patented method, and shall not sell and use the infringing products directly made from the patented method or launch the same in the market in any other forms; if the infringing products are difficult to preserve, the infringer shall be ordered to destroy such products;

(III) If the infringer sells a patent-infringing product or an infringing product directly made from a patented method, the infringer shall be ordered to immediately cease the act of selling, and shall not use the infringing product not yet sold or launch the same in the market in any other forms; if the infringing products not sold yet are difficult to preserve, the infringer shall be ordered to destroy such products;

(IV) If the infringer undertakes to sell a patent-infringing product or an infringing product directly made from a patented method, the infringer shall be ordered to immediately cease the undertaking of sales and eliminate adverse influences, and shall not carry out any actual act of selling;

(V) If the infringer imports a patent-infringing product or an infringing product directly made from a patented method, the infringer shall be ordered to immediately cease the act of import. If the infringing product is already imported, it shall not be sold and



used or launched in the market in any other forms; if the infringing products are difficult to preserve, the infringer shall be ordered to destroy such products; if the infringing product is not yet immigrated, the handling decision against it can be noticed to the relevant customs;

(VI) Patent-infringing exhibitors are ordered to remove patent-infringing exhibits from the exhibition or to destroy or seal corresponding publicity materials, or replace or cover up corresponding display boards, or to take other removal measures;

(VII) Other necessary measures to stop infringement.

If the patent administrative authorities identify the establishment of a patent infringement act on the electronic commerce platform and make a handling decision, they shall inform the provider of the electronic commerce platform to delete, shield or disconnect relevant web-pages related to the patent-infringing products or infringing products directly made from patented methods.

**Article 44** After the patent administrative authorities have identified the establishment of a patent infringement act and made a handling decision to order the infringer to immediately cease the act of infringement, if it is charged against the people's court for administrative litigation by the respondent, the enforcement of the decision shall not be suspended during the litigation.

If the infringer neither charges proceeding, nor ceases the act of infringement upon expiry of the handling decision made by the patent administrative authorities for the establishment of infringement act as identified, the patent administrative authorities may

apply to the people's court for mandatory enforcement.

**Article 45** If the patent administrative authorities identify the establishment of a patent counterfeiting act, they shall order the doer to take the following corrective measures:

(I) If the product or product package without being licensed for patent right is marked with the patent logo, or the product or product package is marked with the patent logo after the patent right is announced as invalid or terminated, or the product or product package is marked with the other's patent number without being licensed, the infringer shall immediately cease the act of marking and eliminate the patent logo on the products or product packages which are not yet sold. If the patent logo on such products is difficult to remove, such products or product packages shall be destroyed;

(II) Immediately cease the act of selling products described in Section I;

(III) Immediately cease distribution of the materials such as the product manual, which refer to a technology or design without being patented as a patented technology or patented design, or refer to a patent application as a patent, or use the other's patent number without being permitted which misleads the public to consider the technology or design involved as the other's patented technology or patented design, and destroy such materials not yet distributed and eliminate adverse influences;

(IV) Immediately cease the act of counterfeit or alteration of patent certificates, patent documents or patent application documents, and destroy such counterfeited or altered and eliminate adverse influences;

(V) False patent exhibitors are ordered to re-

move the false patent exhibits from the exhibition or to destroy or seal corresponding publicity materials, or replace or cover up corresponding display boards, or to take other removal measures;

(VI) Other necessary corrective measures.

If the patent administrative authorities identify the establishment of a patent counterfeiting act on the electronic commerce platform, they shall inform the provider of the electronic platform to delete, shield or disconnect relevant web–pages related to the products of the counterfeited patent.

**Article 46** If the patent administrative authorities identify the establishment of a patent infringement act and order the infringer to immediately cease the act of infringement, or identify the establishment of a patent counterfeiting act and make a penalty decision, they shall publicize the decision within 20 working days after the decision is made, and shall publish enforcement information through the government website and measures.

**Article 47** If the patent administrative authorities identify the establishment of a patent counterfeiting act, they may determine the unlawful earnings of the doer through the following methods:

(I) For selling products of counterfeited patents, the unlawful earnings shall be the product selling price multiplied by the quantity of the product sold;

(II) For entering into contracts of counterfeited patents, the costs charged shall be the unlawful earnings.

**Article 48** If the party applies for administrative reviews or propose administrative litigations to the

people’s court after the patent administrative authorities make the penalty decision, the enforcement of the decision shall not be suspended during the administrative reviews or litigations.

**Article 49** The doer of the patent counterfeiting act shall, within 15 working days after having received the Notice of A Penalty Decision, pay the amount of the penalty set out in the Notice at the specified bank; if it does not pay the penalty, impose an additional fine at the rate of 3% of the amount of the fine per day.

**Article 50** If any act of obstructing and refusing line of duties enforcement of the patent administrative authorities, the public security organ shall impose punishment according to *Public Security Management Punishment Law of the People’s Republic of China*; if the circumstances are so serious as to commit a crime, the judicial organ shall investigate his/her criminal liability according to the law.

## Chapter 7 Supplementary Provisions

**Article 51** The patent administrative authorities may deliver relevant legal instruments and materials via post service, direct delivery, lien service, service by announcement or other methods.

**Article 52** The interpretation of the Measures is vested by the SIPO.

**Article 53** These measures shall become effective on February 1, 2011. The *Patent Executive Law Enforcement Measures* issued by the State Intellectual Property Office’s Order No. 19 on December 17, 2001 shall be superseded simultaneously.